

STATE OF MICHIGAN
COURT OF APPEALS

In re W. L. ROBINSON II, Minor.

UNPUBLISHED
March 14, 2019

No. 344672
Otsego Circuit Court
Family Division
LC No. 18-000008-NA

Before: METER, P.J., and SERVITTO and REDFORD, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights under MCL 712A.19b(3)(i) (parental rights to a sibling have been terminated due to serious neglect or abuse) and (j) (reasonable likelihood of harm if returned to parent). We affirm.

I. FACTS

Before WLR's birth on January 19, 2018, respondent's parental rights to three other children were terminated in April 2017. The older children came under the court's jurisdiction in August 2014 because of drug abuse, chronic neglect, domestic violence and incarceration. After more than 24 months of reunification efforts, including substance abuse assessments, drug screens, WIC, maternal infant support, food and transportation assistance, Medicaid, psychological counseling, and parenting time, the children were returned to their parents' care on June 28, 2016. The children were again removed on August 23, 2016, following a drug raid for suspected methamphetamine manufacturing.

At his birth, WLR tested positive for methadone, amphetamines, methamphetamines, cocaine and marijuana. He suffered from acute drug withdrawal. WLR's mother admitted to testing positive for non-prescribed opiates, benzodiazepines and marijuana throughout the pregnancy. She also admitted that she had no income or home. Respondent, who has a significant drug abuse and criminal history, was incarcerated in August 2016 and remained incarcerated during the pendency of this proceeding. WLR was placed in foster care and on January 24, 2018, petitioner filed a petition to immediately terminate parental rights. Respondent's and the mother's parental rights were terminated on June 19, 2018. WLR's mother has not appealed.

II. STANDARD OF REVIEW

We review for clear error a trial court's decision to terminate parental rights. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The clear error standard controls our review of both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest. A decision qualifies as clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made. Clear error signifies a decision that strikes us as more than just maybe or probably wrong. [*Id.* (quotation marks and citations omitted).]

III. ANALYSIS

Respondent first argues that the trial court clearly erred in finding sufficient evidence to terminate parental rights under MCL 712A.19b(3)(j), on the grounds that a reasonable likelihood existed that WLR would be harmed if returned to respondent's care. We disagree.

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Laster*, 303 Mich App 485, 491; 845 NW2d 540 (2013) (citations omitted). MCL 712A.19b(3) provides in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and the parent has failed to rectify the conditions that led to the prior termination of parental rights.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Respondent does not argue that the trial court erred in terminating his parental rights pursuant to Subsection (i). Since only one statutory ground for termination is needed to terminate parental rights, we need not address his claim of error regarding Subsection (j). *In re Laster*, 303 Mich App at 495.

Respondent next argues that the trial court erred in finding that WLR's best interests were served by termination of respondent's parental rights. We disagree.

A trial court must find by a preponderance of the evidence that termination serves the best interests of the child before it may terminate parental rights. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error a trial court's best-interest decision. MCR 3.977(K); *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). A factual finding is clearly erroneous if we are left with a definite and firm conviction that a mistake was made. *Id.* We give deference to the "trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). We also defer to the trial court's special opportunity to judge the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

When considering best interests, the trial court must focus on the child rather than the parent. *In re Moss*, 301 Mich at 87. The trial court may consider several factors including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012), how long the child has lived in the present home, and the likelihood that the child "could be returned to [the] parent's home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). In *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014), this Court summarized:

The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability and finality, and the advantages of a foster home over the parent's home. The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. [Quotation marks and citation omitted.]

Further, a child's safety and well-being, including the risk of harm a child might face if returned to the parent's care, constitute factors relevant to a best-interest determination. *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011). The trial court's findings need not be extensive; "brief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1).

Respondent argues that the benefits of foster care may not be considered for a best-interest determination. In *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009), this Court explained that "while it is inappropriate for a court to consider the advantages of a foster home in deciding whether a statutory ground for termination has been established, such considerations are appropriate in a best-interests determination." Nothing in the record indicates that the trial court improperly considered this factor when making its statutory grounds findings. Moreover, respondent did not dispute that he had no bond with WLR because of his incarceration or that WLR had a strong bond with his foster care family who desired to adopt him. The trial court, therefore, did not err by considering the benefits of foster care as part of its best-interests determination.

At the termination hearing, respondent argued that it would not be harmful to delay terminating his parental rights until he had an opportunity to show that he could properly parent WLR after his release from prison. The trial court did not clearly err in concluding that respondent, if released early from prison in September 2018, would need extensive rehabilitation services. Although the trial court noted that respondent made commendable efforts in prison to rehabilitate himself through substance abuse services, as well as vocational classes, the trial court also properly considered that respondent failed to take the steps necessary to care for his three older children. The trial court reasonably concluded that significant risks existed that respondent would relapse and lack the ability to provide WLR adequate care. Further, the caseworker testified that it would be harmful and disruptive to WLR's developmental milestones and interfere with WLR's crucial bonding process with his foster parents if WLR were to have involvement with respondent after respondent's release from prison. The trial court also properly considered the caseworker's testimony that termination served WLR's best interests because the barriers that existed during the previous termination proceeding continued to exist.

The record reflects that the trial court also considered WLR's special needs. After his birth, WLR remained in neonatal intensive care for one month. Following his discharge, he required in-home nursing care because WLR had significant physical problems that required extensive care from several medical specialists. WLR continued to be a fragile child with symptoms of neonatal abstinence syndrome. The in-home nurse testified that WLR required care from persons who had special parenting skills. Evidence established that his extraordinary needs would be a challenge even for exceptional parents. WLR's foster parents had experience in caring for children with special needs, including cerebral palsy. The trial court considered the evidence that one of respondent's older children also had special needs and respondent failed to properly care for that child. The record also reflects that respondent failed to articulate a clear plan for how he would provide for WLR's special needs if respondent obtained release from prison and found gainful employment. Further, respondent testified that he previously relapsed from a period of sobriety under the stress of having his three older children removed from his care. The trial court reasonably concluded that respondent would not be able to properly care for WLR. The record indicates that WLR's foster parents provided him the necessary care, security, stability, and permanency he needed.

The record in this case establishes that the trial court appropriately considered the applicable best-interest factors and correctly determined that WLR's best interests would be served by termination of respondent's parental rights.

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ James Robert Redford